

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.16583 of 2015

Date of Decision: August 12, 2015

Partap Singh

....Petitioner

versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE JASPAL SINGH.

Present: Mr.Ajay Jain, Advocate, for the petitioner.

Ms.Kirti Singh, Deputy Advocate General, Haryana.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

Notice of motion to respondent Nos.1 to 5 only at
this stage.

On our asking, Ms.Kirti Singh, learned Deputy
Advocate General, Haryana, accepts notice on their behalf.

Let five copies of the writ petition be supplied to
the State counsel during the course of day failing which this
order shall be automatically recalled and the writ petition shall
be deemed to have been dismissed for non-prosecution.

In view of the nature of order which we propose to
pass, it is not necessary to seek counter-reply from respondent
Nos.1 to 5 or to serve respondent Nos.6 & 7 at this stage as no
order on merits which might be prejudicial to their interest is
being passed.

This is the second round of litigation in which the
petitioner is struggling hard to protect his possession over 6

marlas of land in village Khodma, Tehsil Narnaul, District Mahendergarh where he is said to have constructed a house though the land belongs to Gram Panchayat. Eviction order was passed against the petitioner in a petition filed by respondent No.6 who is also resident of the village. It does appear that Gram Panchayat had passed a resolution dated 21.12.2011 (P-6) to allot the subject land to petitioner for residential purpose. It was taking notice of that resolution that this Court vide order dated 20.04.2015 directed the Deputy Commissioner, Mahendergarh to consider the said resolution of Gram Panchayat and pass an appropriate order under Rule 12 (4) of the Punjab Village Common Lands (Regulation) Rules, 1964.

In purported compliance of the directions, the Deputy Commissioner has passed the impugned order dated 18.07.2015 (P-8) whereby the petitioner's claim has been turned down primarily on following two counts; (i) the Gram Panchayat has now passed a fractured resolution as some of the Panches did not support the petitioner's claim and thus he could not muster support of 3/4th majority, and (ii) the State Government has issued Instructions dated 15.06.2012 in purported compliance of the decision of the Hon'ble Supreme Court dated 28.01.2011 in Jagpal Singh and others versus State of Punjab and others (Civil Appeal No.1132/2001 and SLP (Civil) No.3109 of 2011 and in terms of these Instructions, panchayat land cannot be sold to private-persons or commercial enterprises.

We have heard learned counsel for the petitioner with reference to the impugned order. As regard to first reason, there appears to be some merit in the petitioner's

claim that the Deputy Commissioner ought not to have sought a fresh resolution from Gram Panchayat as this Court had directed him to consider the petitioner's claim under Rule 12 (4) of the 1964 Rules on the strength of earlier resolution of the Gram Panchayat dated 21.12.2011. Such a deviation could be permissible only if there was a dispute regarding genuineness of the resolution dated 21.12.2011. No such finding has been returned.

As regard to the second reason, namely, the Government Instructions, prima-facie, it appears to us that the Government Instructions cannot be static or mechanical to hold that in no circumstance the Gram Panchayat land can be sold. On this analogy, the Gram Panchayat cannot allot even residential plots to land-less persons on nominal price.

The petitioner belongs to Backward Class community. Unless there is a positive finding that he owns a residential house of his own, will it not be contrary to the very philosophy of inclusive growth or social engineering to deny the petitioner the only shelter which he or his family might be having?

It is not necessary to say more than this except that the applicability of the Government Instructions must be viewed with reference to the facts and circumstances of each case so that the Gram Panchayat resolutions are not used as a tool by affluent and influential persons to grab the Gram Panchayat lands which are essentially meant for community services. The utilization of a part of such lands for the rehabilitation or welfare or sustenance of down trodden is also of paramount importance. Since the Deputy Commissioner had no time to look into these deeper aspects which are likely to

confront the authorities time and again, we dispose of this writ petition with liberty to the petitioner to file a petition before the State Government against the order dated 18.07.2015. We further direct the Principal Secretary, Department of Development and Panchayat, Haryana, to entertain that petition so as to elaborate the object, import and purpose of the Government Instructions dated 15.06.2012 with reference to the ratio of the judgment of Hon'ble Supreme Court, cited in those Instructions. If the petitioner files the revision petition within two weeks from the date of receiving a certified copy of this order, there shall be status-quo re: demolition of his residential house and further construction by him till the revision petition is decided.

Ordered accordingly.

Let a copy of this order be given dasti to Ms.Kirti Singh, Deputy Advocate General, Haryana, for information and necessary action.

[SURYA KANT]
JUDGE

August 12, 2015
mohinder

[JASPAL SINGH]
JUDGE